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Is the *De Facto* 1924 Session of the General Conference of the Methodist Episcopal Church, South, *De Jure?*

BY

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IS THE *DE FACTO* CALLED SESSION OF THE GENERAL CONFERENCE *DE JURE?*

Where did the delegated General Conference get its powers? Certainly it did not assume them. From 1784 to 1808 inclusive the General Conference was a "mass convention" with plenary powers. In 1808, for the safety and peace of the Church, that "mass convention," unrestricted in power, amended the *constitution of the Church* by adopting a *constitution for a delegated General Conference,*—in the words of Emory in his "History of the Discipline of the Methodist Episcopal Church," Edition 1844, p. 111, "1808. This was the last meeting of a General Conference, composed of all the preachers who had travelled four years. It was then resolved to have, in future, a delegated General Conference, and the following was adopted *as its constitution,* in lieu of the former." (Italics supplied.) Then follows the *entire chapter* "Of the General Conference" as it appears in the Discipline of 1808.

In 1854 Dr. Wm. A. Smith, one of the ablest and most influential leaders of the Church, a recognized Church constitutional lawyer, induced the General Conference without Annual Conference concurrence to insert in the Chapter "Of the General Conference" a so-called "episcopal veto" to protect the constitution. In 1866 Dr. Smith told the General Conference that in this case he had blundered, that the Annual Conferences must concur to make the change legal. In 1870 the General Conference "instructed" the Committee on Episcopacy "to inquire into the validity" of the action of 1854. That able committee after carefully considering the question unanimously presented to the General Conference an elaborate report, and after holding that report from May 19th to May 25th, and after debate, by a vote of 160 to 4, the General Conference struck out of the Discipline the Act of 1854, and asked the Annual Conferences to agree to our present 2nd proviso in paragraph 43. The Annual Conferences with but nine dissenting votes in the entire Church, laymen and preachers, concurred. Part of that unanswerable report of the Committee on Episcopacy of 1870 is as follows:

> "The General Conference is not an original body, self-existent and independent. It is the creation of another body, larger and stronger than itself. It does not

possess original life or power. It has power; but its powers are derived and dependent. Again: it is representative; represents a power behind and outside of itself; existing before and independent of itself. The general Conference has a Constitution; but it did not make its Constitution. It was made for it by another body, and before it had a being. Its own being and power reside in, and are derived from, the Constitution that another gave it, and that gives it organic life and power. The terms and tenor of the restrictions upon its power show its responsibility, and prove that the right of determining the constitutionality of its acts was reserved, and remains in the hands of the original body of elders." (Journal 1870, p. 284.)

An unauthorized publication in the Discipline from 1854 to 1870, in the Chapter "Of the General Conference," did not become legal because published in the Discipline for all those years, and when the General and Annual Conferences gave the matter careful consideration the error of years was constitutionally corrected. As the delegated General Conference did not originate or assume its constitutional powers, it cannot enlarge or change those powers. Great and distinguished and honorable and respected as it is, it is under law, and that it of purpose intends to grasp ungranted powers is not to be assumed. Whenever it transcends the limitations of its "derived and dependent powers," and on several occasions it has done this, its act is evidently not intentional but inadvertent.

Once more, and that too, in the South, it is asserted and published by a leader in the Church that the six Restrictive Rules are the sole limitations on the powers of the General Conference, that its distinguished men "knew that the Discipline gave them full powers on every question not covered by the six Restrictive Rules," that those rules are the only Constitution of the General Conference, if not the only Constitution of the Church. This opinion, first heard of in 1844, and then assumed by the majority in the North for the purpose of adopting an illegal action, yet deliberately repudiated by the North after consideration from 1888 to 1900, was with emphasis in 1844-45 denied and disproved by our Church, and by a vote of 90 to 2 (the 2 not dissenting on this point) the Louisville Convention calls this opinion a "self-refuted absurdity:"

"It is confidently, although most unaccountably, maintained that the six short Restrictive Rules which were

adopted in 1808, and first became obligatory, as an amendment to the constitution, in 1812, are in fact the true and only constitution of the Church. This single position, should it become an established principle of action to the extent it found favor with the last General Conference, must subvert the government of the Methodist Episcopal Church. It must be seen at once, that the position leaves many of the organic laws and most important institutions of the Church entirely unprotected and at the mercy of a mere and ever fluctuating majority of the General Conference. . . . . Very few indeed of the more fundamental and distinguishing elements of Methodism, deeply and imperishably imbedded in the affection and veneration of the Church, and vital to its very existence, are even alluded to in the Restrictive Articles. This theory assumes the self-refuted absurdity, that the General Conference is in fact the government of the Church, if not the Church itself. With no other Constitution than these mere restrictions upon the powers and rights of the General Conference, the government and Discipline of the Methodist Episcopal Church as a system of organized laws and well adjusted instrumentalities for the spread of the Gospel, and the diffusion of piety, and whose living principles of energy and action have so long commanded the admiration of the world, would soon cease even to exist." (History of the Organization of the Methodist Episcopal Church, South, pp. 222, 199.)

This deliverance by the Louisville Convention was made specifically and avowedly as it said:

"Among the many weighty reasons which influence the Southern Conferences in seeking to be released from the jurisdiction of the General Conference of the Methodist Episcopal Church as now constituted, are the novel and as we think dangerous doctrines, practically avowed and endorsed by that body and the Northern portion of the Church generally, with regard to the constitution of the Church, and the constitutional rights and powers. . . .of . . . .the General Conference." (History of the Organization of the Methodist Episcopal Church, South, p. 221.)

The Kentucky Conference in September, 1844, said:

"This dangerous claim to irresponsible power appears to be chiefly based on the novel and astonishing as-

sumption, that the six restrictive regulations adopted by the General Conference of 1808, is 'the constitution of the Church,' and that, therefore, whatever they do not prohibit, the General Conference has full and rightful power to do." (History of the Organization of the Methodist Episcopal Church, South, p. 117.)

Of this view, first advanced in the Church eighty years ago, yet leaping forward again at this time after its continued repudiation by the South for eighty years, and by the North since 1892, its proponent when confronted with the incontrovertible reasons why it could not be maintained, announced the doctrine heretofore unknown and unsuspected by all students of constitutional law that the General Conference had power over all unessential parts of its constitution. What are "unessential parts of a constitution?" Could a more untenable position be assumed?

Principles of legal construction are matters of reason illuminated by authority. What are the principles of reason touching the constitutional nature of the Chapter "Of the General Conference" in the Discipline of 1808, and the amendments thereto recommended by two-thirds of the General Conference, and endorsed by the required vote of the Annual Conferences?

What is the General Conference that has "full powers to make rules and regulations for our Church under" six limitations and restrictions? Any body of delegates who may call themselves a General Conference, elected under any conditions the Annual Conferences or the General Conference itself may determine, composed of laymen or preachers as they may determine, of such term of service in the Church and of such age as they may please to fix, deliberating in one or two bodies, with such a quorum, and such a president as may please them, and meeting at such time as they may elect? Is it not evident that all the requirements contained in the Chapter must be met in order to constitute a legal General Conference? How could a General Conference be organized on the six restrictions alone? What is the body thus restricted? The body previously described and restricted is the constitutional General Conference, that and no other. If these restrictions be the only constitution of the General Conference, the remainder of the Chapter can be ignored as "unessential parts." Hitherto it has been understood, taught, applied, that "what constitutes is a constitution, that which organizes is organic." This whole Chapter, not the Restrictive Rules alone, lays down aud outlines how

the legal General Conference is to be constituted, how it is to be organized. Discard the other paragraphs of this Chapter and there is nowhere in the Discipline direction for any organization of a General Conference. With these reasons Bishop Bascom agrees:

> "We reject, and always have, as absurd and utterly untenable, the position that the "restrictive articles" are the constitution of the Church, in any allowable sense. The very proposition appended to the articles, is sufficient without anything else, to overthrow the pretension. Very little discernment is necessary, to see at once, that no government is established by these articles; they do not pretend to establish one, and of course, of necessity, cannot be a constitution, for all admit that a constitution is that which establishes and constitutes a government. *That* is intended, and *those* things especially included, without which the government could not exist, and every one perceives that such views do not and cannot apply to the restrictive articles. These articles do not create, nor do they constitute the government, and therefore cannot be the constitution. They do not, nor can they be made, even constructively, to include the fundamental principles of the government. There are other principles of government not found in them, and to which they do not allude, equally elementary, equally essential to the very existence of the government. A constitution, further, means the *form* in which the *governing power* is exercised. Such form, however, is not found in the restrictions, except in part, and as all know, to a very limited extent. The restrictive articles are a part of the constitution of the Methodist Episcopal Church, and a small part only." (Review of Reply to Protest, p. 67.)

This view of the case has been taken by the General and Annual Conferences, as is shown by the record of 1808 and by other General Conferences since that date. Paragraphs 32-36 inclusive, and 40-43 inclusive, as published in the latest edition of the Discipline have—except those untouched since 1808 and by the plenary Louisville Convention of 1845—received a two-third vote of the General Conference and three-fourths of the members of the Annual Conferences. (See Journals 1894, p. 110; 1878, pp. 235, 236; 1866, p. 108; Convention 1845, p. 188; 1808, p. 15; 1866, p. 109; 1808, p. 15; 1878, p. 236; 1808, pp. 16, 89; 1832, p. 378; 1870, p. 331; 1874, pp. 536, 537.)

Paragraphs 37 and 38 will be considered presently. So much for the principles of interpretation; now what of authority can be adduced? Far more than there is space to quote.

In Bascom et al. v. Lane et al., Fed. Cas. No. 1089, at p. 1002, the powers of the General Conference were up for adjudication in May, 1851, before Justice Nelson of the U. S. Supreme Court and Judge Betts, in the Circuit Court of the U. S. for the Southern District of New York. The Court decides Nov. 11th:

> "As jurisdiction and authority, spiritual and temporal in each general conference from 1784 to 1808 inclusive, were the same, unlimited and unrestrained, possessing all the power, which since the latter period *has belonged to the general and annual conferences combined under the new organization.*" (Italics supplied.)

Mr. Justice Nelson afterwards wrote the opinion of the Supreme Court of the United States in the case of Smith et al. v. Swormstedt et al., 16 How. 288—"The Church Property Case"—to which decision not even a single member of the Court dissented.

All the constitutionally adopted amendments to the Chapter "Of the General Conference" were submitted to the Annual Conferences not later than 1878, except paragraph 32 submitted in 1894, and not even one of the Bishops is known to have held the opinion that these changes could be made without the concurrence of the Annual Conferences.

In 1920 the Manual of the Discipline was revised and the College of Bishops *unanimously* agreed:

> "From the organization of our Church, indeed from 1808, the opinion of our leading men, perhaps the unanimous opinion, has been that the entire Chapter in our Discipline, entitled "Of the General Conference" is included in our constitution; and with this opinion the General Conference and the Annual Conferences have agreed in their practice of submitting as amendments proposed changes in that chapter." (Manual 1920, pp. 7, 8.)

Then follows in the Manual Bishop Merrill's concurring opinion. In May, 1924, the College of Bishops again revised the Manual, and again *unanimously* concurred in this view. *So that every active Bishop in the Church today has agreed to this statement of law and fact.*

But paragraphs 37 and 38 are contained in that Chapter.

Did these paragraphs receive the vote of two-thirds of the General Conference and three-fourths of the members of the Annual Conferences? If they did not they have no more legality than had the paragraph touching the so-called veto power introduced in 1854 by Wm. A. Smith, and continued in the Discipline till 1870. The specified paragraphs were not referred to the Annual Conferences, nor did they, according to the records, receive in the General Conference the requisite two-thirds vote. It has been well and truly said that what goes in illegally is not in. Nor does any lapse of years make that constitutional which was not constitutionally adopted. The Missouri Compromise was adopted in 1820, yet not till 1857 was it declared unconstitutional.

Again, in 1856, the General Conference of the Northern Church without Annual Conference concurrence passed an Act similar to our paragraph 37, yet in 1892 that General Conference after a debate of three days, declared:

> "That section, (Of the General Conference) as adopted by the General Conference of 1808, together with such modifications as have been adopted since that time in accordance with the provisions for amendment, is the present constitution." (Daily Advocate, 1892, p. 76.)

And expressly it was declared "the change of the provision for calling an extra session of the General Conference from a unanimous to a two-thirds vote of the Annual Conferences" was not constitutional. Yet not till 1900 did that unconstitutional provision go out of their Discipline. As Dr. Wm. F. Warren, President of Boston University, in his Constitutional Law Questions, p. 157, well says:

> "The changes in them (the original provision touching special sessions) have never been altered, ... were never constitutionally effected, hence have no effect at all."

In 1914 a committee of the College of Bishops of which A. W. Wilson, "who being dead yet speaketh," was chairman, after having carefully considered every word, every fact, every inference, declared that paragraph 37 had "never received the concurrence of the Annual Conferences," and after having declared that "the text of these paragraphs (the entire Chapter Of the General Conference) has been changed in a number of instances without due process of law," gives "the correct text," and *omits from the text paragraphs* 37 and 38. That report approvingly quotes Bascom:

"The General Conference . . . holding power only in virtue of the constitution, and acting beyond, and independently of its provisions, they act without right, and cease at at once to be representatives of the constitution. Hence all such acts are null and void."

Bishop Wilson's committee reported to the full College of Bishops, and after careful consideration the College unanimously approved it. The report was printed, was presented to the General Conference on the second day of the session, and copies were distributed to the delegates. The claim that the Bishops agreed to this report without due consideration is a reflection on their intelligence and is far from the fact. (Journal, 1914, pp. 463 et seq.)

How, then, could paragraph 37 get into the Discipline in 1866, and remain there to this day? The unanimous answer of the Bishops in 1914 to this question is:

"While there have been some variations in practice, inadvertent as we must believe, made without challenge and without debate, by several General Conferences, in the treatment of Chapter II of our Discipline, that entire Chapter ought to be, and most of it is, of the same validity as the portion known as the Restrictive Rules. Except by a vote of two-thirds of the General Conference, concurred in by three-fourths of all the members of the several Annual Conferences who are present and vote, no part of Chapter II should be legally open to alteration, amendment or change." (Op. cit. pp. 470, 471.)

It has been said substantially that the Bishops are better qualified to construe the law of the Church than all the lawyers in the country. They have construed the law at a time when no prejudice darkened their minds, when no purpose to accomplish their desires warped their judgments, and they have pronounced paragraph 37 unconstitutional, and yet by virtue of this unconstitutional paragraph a special session of the General Conference is called!

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